

BERNARD E. PACKARD ET AL.

IBLA 80-888

Decided October 16, 1981

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring mining claims abandoned and void. OR MC 9501 through OR MC 9516.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment--Mining Claims: Assessment Work

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1978, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

2. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Ronald D. Packard, Esq., Palo Alto, California, for appellants.

## OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Bernard E. Packard, Trustee of Packard Holding Trust <sup>1/</sup> has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated July 29, 1980, declaring the 16 mining claims listed in the appendix abandoned and void for failure to file timely evidence of annual assessment work pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR 3833.2-1(a) and 43 CFR 3833.4(a).

Appellants' mining claims were located before October 21, 1976, and recorded with BLM on November 13, 1978. On December 19, 1979, BLM received "Proof of Labor for the assessment year 1978-1979" for each of the claims involved.

Appellants contend on appeal that they filed their annual assessment work with BLM before December 31, 1979, relying on wording of regulation 43 CFR 3833.2-1(a)(1) as it originally appeared in the Federal Register dated January 27, 1977. They state: "Subsequent to that time we have learned that said Section 3833.2-1(a)(1) has been amended to remove the ambiguity. This new regulation was not disseminated as widely or with the same notices as the original section which was received and reviewed by us. We neither received nor were notified of the amendment."

[1] The applicable regulation, 43 CFR 3833.2-1(a), states that the owner of an unpatented mining claim located on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of recording, "which ever date is sooner" (emphasis added), evidence of annual assessment work for the preceding assessment year. See 43 U.S.C. § 1744(a) (1976).

Pursuant to this regulation, appellant was required to file evidence of assessment work "on or before October 22, 1979," as this date was "sooner" than December 30, 1979, i.e. "December 30 of [the] calendar year following the calendar year of recording." 43 CFR 3833.2-1(a). 43 CFR 3833.4(a) provides that failure to satisfy the filing requirement of 43 CFR 3833.2-1(a) results in a conclusive presumption of abandonment and the claim "shall be void." See 43 U.S.C. § 1744(c) (1976). We would note that these regulatory requirements merely replicate statutory requirements. See 43 U.S.C. § 1744(a) (1976).

[2] It is unfortunate that appellants were confused concerning the recordation requirements of assessment work, but such confusion is not a sufficient basis to prevent the voiding of these claims as required by 43 CFR 3833.4(a). All persons dealing with the Government

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<sup>1/</sup> Bernard E. Packard has filed this appeal on behalf of other locators: Dennis J. Packard, Von G. Packard, Lon P. Packard, Jay L. Packard, Sandra B. Packard, Ann Packard, Debra F. Packard, and Florence S. Packard.

are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Dale E. Henkins, 52 IBLA 9 (1981); Clifford J. Kelch, 50 IBLA 127 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Gail M. Frazier  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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James L. Burski  
Administrative Judge

## APPENDIX

<u>Claim Name</u>	<u>Date of Location</u>	<u>Serial No.</u>
Alpha #3	September 1, 1939	OR MC 9501
Alpha #5	July 31, 1941	OR MC 9502
Alpha #6	August 15, 1941	OR MC 9503
Diato - A	November 10, 1950	OR MC 9504
Diatomite #1	October 17, 1950	OR MC 9505
Diatomite #2	October 25, 1950	OR MC 9506
Diatomite #3	October 17, 1950	OR MC 9507
"The Harper Group"	September 1, 1939	OR MC 9508
Malheur Group	July 30, 1938	OR MC 9509
Oregon Group	July 30, 1938	OR MC 9510
Pamela #1	August 18, 1952	OR MC 9511
Pamela #2	August 18, 1952	OR MC 9512
Pamela #3	August 18, 1952	OR MC 9513
Pamela #4	July 28, 1952	OR MC 9514
Pamela #6	August 26, 1952	OR MC 9515
Pamela #7	September 24, 1952	OR MC 9516

